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OFFICE OF PETITIONS

In re Patent No. 7,815,503	: DECISION ON
Walker, et al.	: REQUEST FOR RECONSIDERATION
Application No. 10/787,356	: of PATENT TERM ADJUSTMENT
Issue Date: October 19, 2010	: and
Filed: February 26, 2004	: NOTICE OF INTENT TO ISSUE
Attorney Docket No. 3718582-00103	: CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed December 17, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected from one thousand four hundred thirty-one (1431) days to one thousand six hundred sixty-five (1665) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.**

On October 19, 2010, the instant application matured into U.S. Patent No. 7,815,503 with a patent term adjustment of 1431 days. The Office determined a patent term adjustment of 1431 days based upon 631 days of Office delay pursuant to 37 CFR 1.703(a)(1), 61 days of Office delay pursuant to 37 CFR 1.703(a)(4), and 942 days pursuant to CFR 1.703(b), reduced by 79, 31, and 28 days of Applicant delay pursuant to 37 CFR 1.704(b), and 4 days of Applicant delay pursuant to 37 CFR 1.704(c)(8).

Patentees are correct that the proper amount of days over 36 months from the filing date of the application until the issue date was not included in the "B" delay period. The over three year period began on February 27, 2007 and ended on May 16, 2010 (the day before applicant filed an RCE), and is 1175 days. See 35 U.S.C. 154(b)(1)(B)(i).

However, the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either (1) a

Board decision, (2) the examiner reopening prosecution and issuing another Office action, or (3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination).

Here the period consumed by appellate review is 295 days, beginning on January 28, 2008, the date of filing of the notice of appeal, and ending on November 17, 2008, the date that applicants filed a paper requesting that prosecution be reopened. Thus, B delay is 880 (1175 – 295) days.

In view thereof, the correct number of days of patent term adjustment is **one thousand three hundred sixty-nine (1369)** days (682 days of “A” delay and 880 days of “B” delay, reduced by 142 days of Applicant delay and 51 days of overlap between “A” and “B” delay).

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand three hundred sixty-nine (1369) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3207.



Cliff Congo
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,815,503 B2

DATED : October 19, 2010

INVENTOR(S) : Walker et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1431 days.

Delete the phrase "by 1431 days" and insert – by 1369 days--